

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OSEN LLC	:
	:
Plaintiff,	:
	:
-against-	:
	:
OFFICE OF FOREIGN ASSETS CONTROL OF	:
THE U.S. DEPARTMENT OF TREASURY,	:
	:
Defendant.	:
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Case No. 19-cv-405
COMPLAINT

NATURE OF THE ACTION

1. Plaintiff Osen LLC brings this action against the Office of Foreign Assets Control (“OFAC”) of the U.S. Department of the Treasury (“Treasury”) to vindicate its rights under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to obtain specified government records relating to the Treasury’s designation of certain supporters of terrorism.

2. Osen LLC represents U.S. nationals killed or injured by terrorist groups, including the Islamic Resistance Movement (“HAMAS”), a U.S.-designated Foreign Terrorist Organization (“FTO”).

3. Osen LLC has brought several lawsuits on behalf of its clients against financial institutions that it alleges aided and abetted HAMAS by knowingly providing financial services to HAMAS. Specifically, OSEN LLC alleges that these financial institutions maintained accounts for, and facilitated substantial payments on behalf of, various HAMAS institutions.

4. As set forth more fully below, on September 21, 2018, Osen LLC submitted a FOIA request (the “FOIA Request”) to the Treasury relating to the Treasury’s designations of three of these HAMAS fundraising institutions: Sanabil Association for Relief and Development (“Sanabil”); Al-Salah Society; and Al-Waqfiya Al-Ri’aya Al-Usra Al-Filistinya Wa Al-Lubnanya (“Al-Waqfiya”).

5. OFAC has failed to produce a single document in the four months since Osen LLC's FOIA Request.

JURISDICTION AND VENUE

6. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

7. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

8. Plaintiff Osen LLC is a law firm that primarily represents victims of international terrorism. Osen LLC maintains offices in New York, New York.

9. Defendant OFAC is an office within the Treasury that is principally responsible for administering United States economic sanctions programs. Defendant is an agency within the meaning of 5 U.S.C. §§ 551(1) and 552(f).

BACKGROUND

10. The U.S. Secretary of State designated HAMAS as an FTO on October 8, 1997.

11. Shortly thereafter, the U.S. Government began uncovering the manner in which HAMAS conceals its activities behind charitable fronts. The Treasury's August 22, 2003 designation of Sanabil as a Specially Designated Global Terrorist ("SDGT") pursuant to Executive Order ("E.O.") 13224, which targets terrorists and those providing support to terrorists or acts of terrorism, describes how:

HAMAS raises tens of millions of dollars per year throughout the world using charitable fundraising as cover. While HAMAS may provide money for legitimate charitable work, this work is a primary recruiting tool for the organization's militant causes. HAMAS relies on donations from Palestinian expatriates around the world and private benefactors located in moderate Arab states, Western Europe and North America. **HAMAS uses a web of charities to facilitate funding and to funnel money. Charitable donations to non-**

governmental organizations are commingled, moved between charities in ways that hide the money trail, and then often diverted or siphoned to support terrorism. (Emphasis added.)

12. In designating Sanabil, the Treasury announced that Sanabil “receives large quantities of funds raised by major HAMAS-affiliated charities in Europe and the Middle East and, in turn, provides funding to HAMAS.” In addition to fundraising for HAMAS, the Treasury described how:

At the request of a HAMAS political leader, Sanabil began opening offices in all of the Palestinian refugee camps in Lebanon in August of 2001 in order to increase the foundation’s role inside the camps. After starting by providing basic necessities the charity eventually began asking poor families within the camps to fill out application forms, particularly those who had worked with ... HAMAS. As a result of these efforts, Sanabil has increased its scope of influence within the camps.

See **Exhibit A.**

13. On August 7, 2007, the Treasury designated the Al-Salah Society as a Specially Designated National (“SDN”) pursuant to E.O. 13224. According to the Treasury, the Al-Salah Society is “one of the largest and best-funded Hamas charitable organizations in the Palestinian territories.”

14. The Treasury’s press release describing the designation illustrates how the Al-Salah Society “supported Hamas-affiliated combatants during the first Intifada and recruited and indoctrinated youth to support Hamas’s activities. It also financed commercial stores, kindergartens, and the purchase of land for Hamas,” and has employed a number of HAMAS military wing members. Adam Szubin, then-director of OFAC, announced that “[t]oday’s action alerts the world to the true nature of Al-Salah and cuts it off from the U.S. financial system.” See **Exhibit B.**

15. On October 4, 2012, the Treasury designated Al-Waqfiya as an SDN pursuant to E.O. 13224 for “being controlled by, acting for or on behalf of, and providing financial support to

Hamas.” According to the Treasury, Al-Waqfiya “was established by Hamas in 2000 to financially support the families of Hamas terrorists. The organization has been run by senior Hamas leadership for years, and several senior Hamas leaders play a dominant role within the organization.”

16. The Treasury’s press release announcing the designation further described how:

Al-Waqfiya facilitated the collection of money on Hamas’s behalf, and has used its ties with money-changers and merchants in the Middle East to transfer funds to Hamas in Gaza. When delivering funds to Gaza, Al-Waqfiya obscures the sources of the money so that donations appear as innocuous charitable contributions. Portions of funds sent by Al-Waqfiya to Hamas were used by Hamas military operatives, and have financed the Hamas infrastructure in the Palestinian territories.

17. In designating Al-Waqfiya, then-Treasury Under Secretary for Terrorism and Financial Intelligence David S. Cohen declared that “[t]he Treasury Department will continue to work to disrupt Hamas’s efforts to radicalize vulnerable communities and undermine regional stability. Today’s action represents another step in our effort to ensure that charitable fronts are not used to finance terrorism.” See **Exhibit C**.

18. Banks play a critical role in moving funds from donors sharing HAMAS’ ideology to HAMAS-controlled organizations that effectuate its goals. Osen LLC has brought suits against various financial institutions that allegedly provided financial services to these three and other HAMAS “charities” by maintaining accounts for them and facilitating substantial payments on their behalf. See, e.g., *Weiss, et al. v. National Westminster Bank PLC*, Case No. 13-1618 (2d Cir.); *Weiss et al. v. National Westminster Bank PLC*, Case No. 05-cv-04622 (E.D.N.Y.); *Strauss, et al. v. Credit Lyonnais, S.A.*, 06-cv-00702 (E.D.N.Y.); *Averbach, et al. v. Cairo Amman Bank*, Case No. 19-cv-00004 (S.D.N.Y.); *Spetner v. Palestine Investment Bank*, Case No. 19-00005 (E.D.N.Y.); *Singer, et al. v. Bank of Palestine*, Case No. 19-00006 (E.D.N.Y.); *Goldstein, et al. v. BLOM Bank SAL*, Case No. 19-00008 (E.D.N.Y.).

OSEN LLC'S FOIA REQUEST

19. On September 21, 2018, Osen LLC submitted its FOIA Request to the Treasury via fax, seeking each "Designation Package and all exhibits attached thereto" supporting the Treasury's designations of Sanabil, the Al-Salah Society, and Al-Waqfiya. See **Exhibit D**.

20. The Treasury acknowledged its receipt of Osen LLC's request on September 25, 2018 via the letter attached hereto as **Exhibit E**, in which it assigned Osen LLC's FOIA Request No. 2017-09-133.

21. OFAC then sent Osen LLC a letter dated October 5, 2018, attached hereto as **Exhibit F**, in which it stated that it had referred the FOIA Request to OFAC for processing on September 21, 2018. The Treasury also stated that "[w]e may encounter some delay in processing your request since OFAC is experiencing a substantial backlog of FOIA requests that has adversely affected its response time. We will make every effort to comply with your request in a timely manner; however, there are currently 198 open requests ahead of yours."

22. As of the date of this Complaint, OFAC and the Treasury have not responded further to Osen LLC's FOIA Request, or provided any documents.

CLAIMS FOR RELIEF

First Claim for Relief

(For a Declaration that Osen LLC is Entitled to the Records Sought in Its FOIA Request)

23. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

24. Upon information and belief, OFAC has possession and control of the requested records and is responsible for fulfilling Plaintiff's FOIA Request.

25. Upon information and belief, the records sought in Osen LLC's FOIA Request are not subject to complete withholding under any of the exemptions from public disclosure set forth in 5 U.S.C. § 552(b), nor has OFAC identified any such exemption or any such affected documents.

26. Therefore, OFAC's failure to provide the records responsive to Osen LLC's FOIA Request violates Osen LLC's rights under 5 U.S.C. § 552.

27. OFAC's failure to formally deny Osen LLC's FOIA Request prevents Osen LLC from appealing OFAC's failure to provide records responsive to its FOIA Request. *See* 5 U.S.C. § 552(a)(6)(A)(i) and (ii). Absent this denial, and because OFAC has failed to comply with FOIA's applicable 20-day time limits, Osen LLC is "deemed to have exhausted [its] administrative remedies," and accordingly brings this lawsuit seeking a declaration that OFAC is obligated to provide it with copies of the records sought in Osen LLC's FOIA Request. *See* 5 U.S.C. § 552(a)(6)(C)(i).

28. Osen LLC is thus entitled to a declaration that OFAC is obligated to provide it with copies of the records sought in Osen LLC's FOIA Request.

Second Claim for Relief

(For an Injunction Compelling OFAC to Comply with Osen LLC's FOIA Request)

29. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

30. As a result of the foregoing, Osen LLC is entitled to an injunction compelling OFAC to provide Osen LLC with copies of the records sought in its FOIA Request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- a. Accept jurisdiction over this action;
- b. Declare that Osen LLC is entitled to copies of the records sought in its FOIA Request;
- c. Issue an injunction compelling OFAC to collect and give Osen LLC copies of the records requested in its FOIA Request;
- d. Award Osen LLC reasonable attorney fees and other litigation costs under 5 U.S.C. § 552(a)(4)(E); and
- e. Grant other and such further relief as the Court deems just and proper.

Dated: New York, New York
January 15, 2019

OSEN LLC

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